Not designated for publication.

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA07-1274

	Opinion Delivered SEPTEMBER 17, 2008
CAROL CAMPBELL-HARPER APPELLANT	APPEAL FROM THE SALINE COUNTY CIRCUIT COURT, [NO. DR07-277-1]
V.	HONORABLE GRISHAM PHILLIPS, JUDGE
CLINT HARPER APPELLEE	AFFIRMED ON DIRECT APPEAL; CROSS-APPEAL MOOT

ROBERT J. GLADWIN, Judge

Carol Campbell-Harper appeals from a divorce decree that incorporated a property-settlement agreement. She argues that the decree should be set aside because the trial court forced the property settlement on her; her husband Clint acted fraudulently during settlement negotiations; and the court granted her a divorce when she had only filed for separate maintenance. Clint cross-appeals, arguing that Carol's appeal should be dismissed because her notice of appeal was deficient and she accepted benefits from the divorce decree. We affirm on direct appeal, and our affirmance makes the cross-appeal moot.

The parties were married on August 12, 2003. One child was born of the marriage. In February 2007, Clint sued for divorce, and Carol counterclaimed for separate maintenance. Soon thereafter, the couple began negotiating to settle all issues regarding property division, child custody, child support, and visitation.

Following a number of emails and telephone calls among parties and counsel, Carol's attorney drafted a settlement decree on or about June 5, 2007 (hereafter "Decree #1"). The decree recited that Carol was entitled to an absolute divorce and custody of the couple's child. Clint was given visitation rights and child-support obligations, both past-due and future. It was agreed that he could discharge his past-due support by paying $244. The couple also settled their property division, which included the marital home, a house in Mexico, an optical business, and various vehicles and equipment. They agreed to accept a current offer on the Mexico property, contingent upon the agreement being entered into, with Clint paying $25,000 of the sale proceeds towards future child support. The decree additionally divided the couple's debt. Among other things, Clint was given responsibility for the balance due on a Polaris ATV, and Carol was assigned the debt on a number of credit cards, including a Gap card.

The record indicates that Clint wanted to back out of the agreement almost immediately. As a result, neither party signed Decree #1. However, they talked further, which resulted in a second proposed decree, drafted a few days later (hereafter "Decree #2)." This decree was the same as Decree #1 in most relevant respects. Its primary difference was that it made Carol solely responsible for debts owed to her family members. This referred to a loan balance of $250,000 owed to her grandparents.

On or about June 13, 2007, Clint signed Decree #2 and forwarded it to Carol's attorney, along with the $244 child-support check. Carol went to Mexico around this time to assist in closing the house and to clean out her possessions. However, she did not sign

Decree #2. On July 3, 2007, Clint filed a motion asking the circuit court to enforce Decree #2. Carol then moved to enforce Decree #1.

The court set a hearing on the motions for July 30, 2007. That morning, Carol withdrew her motion to enforce Decree #1. She told the court, with some conflict in her testimony, that she and Clint had reached a full and final settlement on June 5, 2007 (as embodied in Decree #1). She also said that the family-debt provision was probably omitted from Decree #1 accidentally, through a drafting error. Nevertheless, she said, she no longer wanted to enter into an agreement with Clint because she could not trust him. She testified that Clint had charged $3,922.43 on the Gap card between June 5 and 13, 2007, even though both proposed decrees assigned the Gap debt to her. She also said that Clint misled her on a matter regarding the Polaris ATV. According to her, she agreed to take $800 less in child support so Clint could pay off the debt on the ATV, which was awarded to him in both proposed decrees. However, between the time that Decrees #1 and #2 were drafted, she learned that Clint had wrecked the ATV and received an insurance check for the damage.

Clint testified that he wanted the court to enforce Decree #2 or Decree #1, if it included the family-debt provision that had been omitted by mistake. He admitted that he used the Gap card to buy clothing for himself and his children following a fire. But, he said, he asked his lawyer to tell Carol immediately that he would reimburse her for the charges, though he could not remember the exact date that this occurred. Clint also testified that he received about $5000 in insurance proceeds for the ATV prior to settlement. However, he said that Carol never made him aware that it was important to her whether he had the ATV

or the insurance money in lieu of the ATV. He also said that he used the insurance proceeds to pay off the ATV debt on June 26, 2007.

The court ruled that the parties had reached a settlement, represented by Decree #1. The question then arose as to whether the court could grant Carol a divorce, given that she had filed for separate maintenance. Ultimately, the court asked for testimony on grounds and residency, which was offered by both parties.

On August 7, 2007, the court entered a divorce decree, finding that the parties entered into a property-settlement agreement on June 5, 2007 (Decree #1). The court approved the terms from Decree #1, adding that Clint would pay Carol $3,922.43 for the Gap charges, plus interest, and that Carol would be responsible for the family debt, which was unintentionally omitted from the parties' agreement.

On August 15, 2007, Carol moved to set aside the decree. She asserted that Clint owed an additional $80 on the Gap card and that no final agreement was reached on June 5. The court ruled that Carol's testimony was clear that the parties had reached a settlement agreement on that date and that Decree #1 reflected the agreement's terms, except for the unintentional omission of the family debt. The court then added $80 to Clint's Gap charges and denied Carol's motion to vacate the decree. Carol brought this appeal.

We first address Carol's argument that she and Clint never agreed on a settlement. Our law favors and encourages settlement agreements. *Roberts v. Green Bay Pkg., Inc.*, 101 Ark. App. 160, ___ S.W.3d ___ (2008); *Williams v. Davis*, 9 Ark. App. 323, 659 S.W.2d 514 (1983). Like any other contract, the terms of a settlement agreement must be definitely agreed

upon and reasonably certain. *Roberts*, *supra*. A mutual agreement, as evidenced by objective indicators, is essential. *Id*. The issue of whether parties have entered into an agreement is a question of fact, and the trial court's findings of fact will not be reversed unless they are clearly against the preponderance of the evidence. *See Country Corner Food & Drug, Inc. v. Reiss*, 22 Ark. App. 222, 737 S.W.2d 672 (1987).

Carol contends that she and Clint did not settle their divorce case but merely attempted to settle it. However, there is considerable evidence to the contrary. Prior to the hearing, Carol filed a motion asking the court to enforce the terms of Decree #1. Her motion recites that "the parties reached a settlement on or about the 5th day of June, 2007" and that "the original Order that was made on or about the 5th day of June, 2007, should be enforced by this Court." Carol stood by this motion until the day of the hearing. She also testified in open court that the parties reached a full and final settlement on June 5, 2007. Moreover, the written instrument incorporating the June 5 settlement—Decree #1—was offered into evidence at the hearing. The court additionally heard testimony from both parties that the family-debt provision was accidentally omitted from Decree #1. Accordingly, the court determined that Decree #1, as modified to include the family-debt clause, reflected the parties' agreement. Given these circumstances, we do not think the trial court clearly erred in approving the settlement. *Compare Roberts*, *supra*, and *Williams*, *supra* (reversing settlement decrees where the parties offered no writings or testimony that an agreement was reached). Further, while there was some inconsistency in Carol's testimony as to whether she considered the matter settled, we defer to the trial court to resolve conflicts in evidence. *See*

Scott v. Scott, 86 Ark. App. 120, 161 S.W.3d 307 (2004).

Carol also argues that Clint should not get the benefit of Decree #1 because he tried to repudiate it. She cites *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005), but it is not on point. There, we held that a person who repudiates a compromise agreement cannot use Ark. R. Evid. 408 to exclude evidence of the agreement. There is no such evidentiary issue here. Further, Carol offers no persuasive argument that Clint's attempt to repudiate the agreement, after it already existed, requires it to be set aside.

Next, Carol claims that Clint's Gap charges should void the settlement. She argues that the charges are proof that Clint did not consider himself bound by the settlement agreement, which assigned the Gap debt to her. However, Clint's testimony indicates his awareness that he was responsible to Carol for the purchases. For instance, he said that he had instructed his attorney to repay Carol.

Carol also claims that Clint's failure to tell her about the ATV insurance check was fraudulent and should void the settlement. Only clear and satisfactory evidence of fraud or mistake will justify disturbing a settlement. *See generally Fletcher v. Whitlow,* 72 Ark. 234, 79 S.W. 773 (1904). *See also* 15A C.J.S. *Compromise & Settlement*, § 53 (2002). Carol argues that she accepted less child support so Clint could pay the debt on the ATV and was unaware that Clint had received insurance proceeds for the ATV. However, she admitted that Clint had not lied to her about the matter. Further, Clint paid the debt on the ATV. We cannot see how his using insurance proceeds to pay the debt, rather than some other money, affected the validity of the settlement, and Carol does not satisfactorily explain why it should require the

settlement to be set aside.

Next, Carol argues that the trial court erred by "forcing" her to take a divorce when she pled for separate maintenance. We see no error because Carol agreed, as part of the settlement, that she was entitled to an "absolute divorce." Carol also contends that, because she had not filed a divorce complaint at the time of the hearing, the court should have waited thirty days after the hearing to grant the divorce. She cites Arkansas Code Annotated section 9-12-307(a)(1)(B) (Repl. 2008), which provides that no divorce decree shall be granted "until at least thirty (30) days have elapsed from the date of the filing of the complaint." This is sometimes referred to as the thirty-day cooling-off period. *See Roberts v. Yang*, ___ Ark. App. ___, ___ S.W.3d ___ (June 4, 2008).

We find no ground for reversal. Clint filed the original complaint on February 26, 2007; the decree was entered on August 7, 2007. Thus, the trial court's grant of divorce came more than thirty days after "the filing of the complaint." Carol offers no persuasive argument or authority that the thirty days must be measured from a pleading filed after the original complaint. The statute plainly designates the initial complaint as the reference point, not a subsequent, amended complaint or counterclaim. *See generally Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007) (holding that a statute should be construed just as it reads, giving the words their ordinary and usually accepted meaning in common language). Further, Arkansas Code Annotated section 9-12-310 (Repl. 2008) prohibits the rendering of a divorce decree in certain circumstances "before the thirtieth day following the day upon which *the action for divorce is commenced*." (Emphasis added.) Reading these statutes in harmony, it is clear that the

thirty days should be measured from the filing of the original complaint that commences the action.

Carol also makes an argument regarding proof of residency. To obtain a divorce, the plaintiff must prove 1) residence in the state by either the plaintiff or defendant for sixty days next before the commencement of the action, and 2) residence in the state for three full months before the final judgment granting the decree of divorce. Ark. Code Ann. § 9-12-307(a)(1)(A) (Repl. 2008). Residency must be corroborated. Ark. Code Ann. § 9-12-306(c)(1) (Repl. 2008); *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Carol claims that her residency was not corroborated. She appears to contend that the length of residency required by Arkansas Code Annotated section 9-12-307 refers to the parties' *county* of residence. However, the statute requires proof and corroboration of Arkansas residency. Here, both parties testified at the hearing about their residency in Arkansas for the required periods. No witness offered corroboration at the hearing, but Clint later moved to supplement the trial record with the deposition of his mother, Patricia Harper.[1] Mrs. Harper stated that Clint and Carol resided in Saline County until a fire destroyed their home in September 2006. They then moved to Sheridan (Grant County) until Clint moved out in February 2007. Then Clint lived with her and her husband in Saline County. We conclude

[1] The document appears to be more of an affidavit than a deposition. Carol makes no argument for reversal concerning the form of Mrs. Harper's testimony. She does claim that the trial court did not rule on Clint's motion to supplement the record, but this appears incorrect. The court's decree states, "upon the Plaintiff's motion to supplement the record and the affidavit attached thereto and accepted by the Court as corroboration of residency ...."

that this constitutes corroboration that Carol and Clint lived in Arkansas at least five months just before the complaint was filed, which satisfies both statutory time periods. *See Yang*, *supra* (holding that long-time residency in Arkansas immediately prior to the divorce being filed satisfied both the sixty-day and the three-month requirements).

For the reasons stated, we affirm the entry of the divorce decree. Our holding renders Clint's cross-appeal moot.

Affirmed on direct appeal; cross-appeal moot.

ROBBINS and BIRD, JJ., agree.